SENATE BILL No. 672

DIGEST OF INTRODUCED BILL

Citations Affected: IC 14-8-2; IC 14-34.

Synopsis: Surface mining and land reclamation. Makes certain changes concerning surface coal mine reclamation. Defines high capability land and redefines prime farmland. Requires an application for a surface coal mining and reclamation permit to include a soil survey of high capability land. Limits the statewide acreage of prime farmland and high capability land that is exempt from reclamation to 13,000 acres and provides a method to administer this limitation. Requires a permittee to perform certain procedures for the mining and reclamation of high capability land.

Effective: July 1, 1999.

Waterman

January 22, 1999, read first time and referred to Committee on Natural Resources.

Introduced

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

SENATE BILL No. 672

A BILL FOR AN ACT to amend the Indiana Code concerning natural and cultural resources.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 14-8-2-121.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 121.5. "High capability land", for purposes of IC 14-34, means land other than prime farmland that the director determines is:**

(1) capable of being reclaimed for row crop agricultural purposes and is suitable for row crop agricultural purposes based on United States Soil Conservation Service soil survey classifications of the affected land before mining; and

(2) the optimum future use of which is for row crop agricultural purposes.

SECTION 2. IC 14-8-2-213 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 213. "Prime farmland", for purposes of IC 14-34, has the meaning that is:

(1) prescribed by the United States Secretary of Agriculture

~~(A)~~ on the basis of factors such as moisture availability, temperature regime, chemical balance, permeability, surface

layer composition, susceptibility to flooding, and erosion characteristics; and

~~(B) for land that historically has been used for intensive agricultural purposes; and~~

(2) published in the Federal Register.

SECTION 3. IC 14-34-3-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. An application for a surface coal mining and reclamation permit must include the following:

(1) The names and addresses of the following:

(A) The permit applicant.

(B) Every legal owner of record of the property (surface and mineral) to be mined.

(C) The holders of record of any leasehold interest in the property.

(D) Any purchaser of record of the property under a real estate contract.

(E) The operator if the operator is a person different from the applicant.

(F) If a person in clauses (A) through (E) is a business entity other than a single proprietor, the names and addresses of the principals, officers, and resident agent.

(2) The names and addresses of the owners of record of all surface and subsurface areas adjacent to any part of the permit area.

(3) A statement of each current or previous surface coal mining permit in the United States held by the applicant, including each pending application, the permit identification, and the state that issued that permit or holds the pending application.

(4) If the applicant is a partnership, a corporation, an association, or other business entity, the following where applicable:

(A) The names and addresses of every officer, partner, or director or person performing a function similar to a director of the applicant.

(B) The name and address of each person owning, of record, at least ten percent (10%) of any class of voting stock of the applicant.

(C) A list of all names under which the applicant, partner, or principal shareholder previously operated a surface coal mining operation within the United States within:

(i) the five (5) years preceding the date of submission of the application; or

(ii) any additional period that the director establishes.

(5) A statement of whether the applicant or a subsidiary, an affiliate, or a person controlled by or under common control with the applicant has:

(A) ever held a federal or state coal mining permit that in:

(i) the five (5) years preceding the date of submission of the application; or

(ii) any additional period that the director establishes;

was suspended or revoked or is in the process of revocation; or

(B) had a mining bond or similar security deposited in lieu of bond forfeited;

and if so, a brief explanation of the facts involved and identification of the state in which this action occurred.

(6) A copy of the applicant's advertisement to be published under IC 14-34-4-1. The advertisement must include the following:

(A) The names of the property owners involved.

(B) A description of the exact location and boundaries of the proposed site sufficient so that the proposed surface coal mining operation is readily locatable by local residents.

(C) The location where the application is available for public inspection.

(7) A description of the following:

(A) The type and method of surface coal mining operation that exists or is proposed.

(B) The engineering techniques proposed or used.

(C) The equipment used or proposed to be used.

(8) The anticipated or actual starting and termination dates of each phase of the surface coal mining operation and the number of acres of land to be affected.

(9) An accurate map or plan, to an appropriate scale, clearly showing the following:

(A) The land to be affected as of the date of the application.

(B) The area of land within the permit area upon which the applicant has the legal right to enter and commence surface coal mining operations, including the following:

(i) A statement of those documents upon which the applicant bases the applicant's legal right to enter and commence surface coal mining operations on the area affected.

(ii) Whether that right is the subject of pending court litigation.

(10) The name of the watershed and location of the surface stream

or tributary into which surface and pit drainage will be discharged.

(11) A determination of the probable hydrologic consequences of surface coal mining and reclamation operations, both on and off the mine site, with respect to the following:

(A) The hydrologic regime.

(B) The quantity and quality of water in surface and ground water systems, including the dissolved and suspended solids under seasonal flow conditions.

(C) The collection of sufficient data for the mine site and surrounding areas so that an assessment can be made of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability.

However, this determination is not required until the time that hydrologic information on the general area before mining is made available from an appropriate federal or state agency. The permit may not be approved until the information is available and is incorporated into the application.

(12) When requested by the director, the climatological factors that are peculiar to the locality of the land to be affected, including the following:

(A) The average seasonal precipitation.

(B) The average direction and velocity of prevailing winds.

(C) The seasonal temperature ranges.

(13) Accurate maps to an appropriate scale clearly showing the land affected on the date of application and the same information that is set forth on topographical maps of the United States Geological Survey of a scale of 1:24,000 or 1:25,000 or larger, including all manmade features and archeological and historical sites known by the division of historic preservation and archeology. The map or plan must show the following:

(A) All boundaries of the land to be affected.

(B) The boundary lines and names of present owners of record of all surface areas abutting the permit area.

(C) The location of all buildings within one thousand (1,000) feet of the permit area.

(14) Cross section maps or plans of the land to be affected, including the actual area to be mined, prepared by or under the direction of and certified by an engineer licensed under IC 25-31 or a geologist certified under IC 25-17.6 with assistance from experts in related fields such as land surveying and landscape

architecture. The maps or plans must show pertinent elevation and location of test borings or core samplings and depict the following:

(A) The nature and depth of the various strata of overburden as required by the commission in the commission's rules.

(B) The location and quality of subsurface water if encountered.

(C) The nature and thickness of each coal or rider seam above the coal seam to be mined.

(D) The nature of the stratum immediately beneath the coal seam to be mined.

(E) All mineral crop lines and the strike and dip of the coal to be mined within the area of land to be affected.

(F) Existing or previous surface coal mining limits.

(G) The location and extent of known workings of each underground coal mine, including mine openings to the surface.

(H) The location of aquifers as required by the commission in the commission's rules.

(I) The estimated elevation of the water table.

(J) The location of spoil, waste, or refuse areas and topsoil preservation areas.

(K) The location of all impoundments for waste or erosion control.

(L) Each settling or water treatment facility.

(M) Constructed or natural drainageways and the location of each discharge to a surface body of water on the area of land to be affected or adjacent to the land to be affected.

(N) Profiles at appropriate cross sections of the anticipated final surface configuration that will be achieved under the operator's proposed reclamation plan.

(15) A statement of the result of test borings or core samplings from the permit area, including the following:

(A) Logs of the drill holes.

(B) The thickness of the coal seam found and an analysis of the chemical properties of that coal.

(C) The sulfur content of each coal seam.

(D) Chemical analysis of potentially acid or toxic forming sections of the overburden.

(E) A chemical analysis down to and including the deeper of the following:

(i) The stratum lying immediately underneath the lowest

coal seam to be mined.

(ii) An aquifer below the lowest coal seam to be mined that may be adversely impacted by mining.

The director may waive the requirement as to the specific application of this clause if the director determines in writing the requirements are unnecessary.

(16) For the land in the permit application that a reconnaissance inspection suggests may be prime farmland **or high capability land** and to confirm the exact location of the prime farmland **or high capability land,** a soil survey in accordance with the standards established by the United States Secretary of Agriculture.

(17) A reclamation plan that meets the requirements of section 12 of this chapter.

(18) Proof that the applicant is self-insured or has a public liability insurance policy issued by an insurance company authorized to do business in Indiana in force for the surface coal mining and reclamation operations for which the permit is sought. The policy must provide for personal injury and property damage protection in an amount adequate to compensate each person injured as a result of the surface coal mining and reclamation operation. If a permit is granted, the permittee shall maintain the policy in full force and effect for the duration of the permit or a renewal.

(19) A blasting plan that outlines the procedures the operator will use to comply with IC 14-34-12.

(20) A listing of all notices of violations, and their final resolution, of:

(A) IC 13-4.1 (before its repeal);

(B) this article; and

(C) a:

(i) federal statute or regulation; or

(ii) state statute or rule enacted or adopted in response to a federal statute or regulation;

pertaining to air or water environmental protection;

incurred by the applicant or a subsidiary, an affiliate, or a person controlled by or under common control with the applicant in connection with any surface coal mining operation during the three (3) year period before the date of application.

SECTION 4. IC 14-34-3-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 12. (a) Each reclamation plan submitted as part of a permit application as required

by section 3 of this chapter must include the following, in the degree of detail necessary to demonstrate that reclamation required by this article can be accomplished:

(1) The:

(A) identification of land subject to surface coal mining operations over the estimated life of those operations; and

(B) size, sequence, and timing of the sub areas for which it is anticipated that individual permits for mining will be sought.

(2) A statement of the condition of the land to be covered by the permit before mining, including the following:

(A) The uses existing at the time of the application.

(B) If the land has a history of previous mining, the uses that preceded mining.

(C) The capability of the land before mining to support a variety of uses giving consideration to the following:

(i) Soil and foundation characteristics.

(ii) Topography.

(iii) Vegetative cover.

(iv) If applicable, a soil survey prepared under section 3(16) of this chapter.

(D) The productivity of the land, including the following:

(i) Appropriate classification as prime farmland **or high capability land.**

(ii) The average yield of food, fiber, forage, or wood products from the land obtained under high levels of management.

(3) The proposed use of the land following reclamation, including the following:

(A) A discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses.

(B) A discussion of the relationship of that use to existing land use policies and plans.

(C) The comments of any owner of the surface and state and local governments or agencies of state and local governments that would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

(4) A detailed description of:

(A) how the proposed postmining land use is to be achieved; and

(B) the necessary support activities that may be needed to achieve the proposed land use.

(5) A description of the engineering techniques and the major

equipment proposed to be used in the surface coal mining and reclamation operation.

(6) Plans for the following:

(A) The control of surface water drainage and of water accumulation.

(B) Where appropriate, backfilling, soil stabilization, and compacting, grading, and appropriate revegetation.

(C) Soil reconstruction, replacement, and stabilization under the performance standards in IC 14-34-10-2(b)(10) for the food, forage, and forest land identified in IC 14-34-10-2(b)(10).

(7) An estimate of the cost of the reclamation, including a statement as to how the permittee plans to comply with each of the requirements set out in IC 14-34-10-2.

(8) The consideration given to maximize the use and conservation of the solid fuel resource recovered so that reaffecting the land in the future is minimized.

(9) A detailed estimated timetable for the accomplishment of each major step in the reclamation plan.

(10) The consideration given to making the surface coal mining and reclamation operation consistent with the following:

(A) Surface owner plans.

(B) Applicable state and local land use plans and programs.

(11) The steps to be taken to comply with the following:

(A) Applicable air and water quality laws and rules.

(B) Applicable health and safety standards.

(12) The consideration given to developing the reclamation plan in a manner consistent with local physical environmental and climatological conditions.

(13) With respect to land contiguous to the area to be covered by the permit, a description of the following:

(A) The land.

(B) Interests in the land.

(C) Options on interests in the land held by the applicant.

(D) Pending bids on interests in the land by the applicant.

This information is confidential and not a matter of public record.

(14) The results of test borings that the applicant has made to the permit area or other equivalent information and data in a form satisfactory to the director, including the location of subsurface water and an analysis of the chemical properties. The analysis must include an analysis of the acid-forming properties of the mineral and overburden. The information that pertains only to the

analysis of the chemical and physical properties of the coal, except information regarding mineral or elemental contents that are potentially toxic in the environment, is confidential.

(15) A detailed description of the measures to be taken during the surface coal mining and reclamation process to assure the protection of the following:

(A) The quality of surface and ground water systems, both onsite and offsite, from adverse effects of the mining and reclamation process.

(B) The rights of present users to that water.

(C) The quantity of surface and ground water systems, both onsite and offsite, from adverse effects of the mining and reclamation process or to provide alternative sources of water where the protection of quantity cannot be assured.

(16) Other information that the commission requires by rule.

(b) Unless otherwise provided, information required by this section that is not on public file under Indiana law is confidential.

SECTION 5. IC 14-34-4-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 9. (a) **Until July 1, 1999,** this section does not apply to an existing surface coal mining operation that held a valid permit on August 3, 1977, with continuous permits since that date. **However, the following apply to a request for an exemption under this section that is submitted after June 30, 1999:**

(1) The land that is the subject of a request for an exemption must comply with the standards established under this article for:

(A) prime farmland; or

(B) high capability land.

(2) There is a limitation of thirteen thousand (13,000) acres statewide on the exemptions that may be granted.

(3) An applicant for an exemption must include a scale map of the area proposed to be exempted that does the following:

(A) Delineates all prime farmland and high capability land soils.

(B) Shows the total number of acres proposed for the exemption to the nearest acre.

(C) Shows the numbers of acres of each prime farmland and high capability land soil type in the area proposed to be exempted.

(b) The director shall implement the acreage limitation established by subdivision (a)(2) as follows:

(1) The director shall initially review all requests for exemptions. Based on the information initially submitted in the request, the director shall prepare a preliminary review. The request for exemption, the director's preliminary review, and the permit application to which the exemption applies must all be subject to a public comment and review.

(2) The director shall collectively total acreage for all requests for exemptions of land from prime farmland or high capability land permit requirements:

(A) first submitted after June 30, 1999, and pending on July 1, 1999; and

(B) that are eligible for exemption based on the merits of the request.

If the total acreage is less than thirteen thousand (13,000) acres, the director shall grant all eligible requests. If the total acreage is more than thirteen thousand (13,000) acres, the director shall grant eligible requests on a pro rata basis so that the cumulative total of acres exempted under this section equals thirteen thousand (13,000) acres.

(3) This subdivision applies if the total requests granted under subdivision (2) are less than thirteen thousand (13,000) acres. On a monthly basis, the director shall cumulatively total the acreage granted an exemption under this subsection since June 30, 1999. In the month that the cumulative total of exempted acreage exceeds thirteen thousand (13,000) acres, the director shall grant eligible requests for exemption on a pro rata basis so that the cumulative total of acres exempted under this section, including that month's total, equals thirteen thousand (13,000) acres.

(4) When a cumulative total of thirteen thousand (13,000) acres is exempted under this section, the director may not grant an exemption to any request.

(5) A permittee may relinquish exempted acreage in a written release that identifies the acreage that the permittee wishes to release. The director shall announce to all permittees the total number of released acres. A permittee may request an exemption within thirty (30) days after the announcement. The director shall grant all eligible requests for exemption on a pro rata basis to the extent of available acreage.

(6) The director must attach a copy of the decision on each application for exemption to the permit application that includes the acreage for which the exemption is requested.

~~(b)~~ **(c)** In addition to finding the application in compliance with section 7 of this chapter, if the proposed mining area contains prime farmland under IC 14-34-3-3(16), the director shall, after consultation with the United States Secretary of Agriculture and under rules adopted by the commission, grant a permit to mine on prime farmland if the director finds in writing that the operator has the technological capability to restore the mined area, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management and can meet the soil reconstruction standards in IC 14-34-10-2(b)(10).

SECTION 6. IC 14-34-6-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 13. The director may release the bond, deposit, or letter of credit in whole or in part if the director is satisfied that the reclamation covered by the bond or deposit or part of the bond or deposit has been accomplished as required by this article according to the following schedule:

(1) When the operator completes the backfilling, regrading, and drainage control of a bonded area in accordance with the approved reclamation plan, the release of sixty percent (60%) of the bond or collateral for the applicable permit area.

(2) After revegetation is established on the regraded mined land in accordance with the approved reclamation plan. When determining the amount of bond to be released after successful revegetation has been established, the director shall retain the amount of bond for the revegetated area that would be sufficient for a third party to cover the cost of establishing revegetation and for the period specified for operator responsibility in IC 14-34-10 of establishing revegetation. The director may not release a part of the bond or deposit under this subdivision:

(A) if the land to which the release would be applicable is contributing suspended solids to stream flow or runoff outside the permit area in excess of the requirements set forth in IC 14-34-10-2(b)(13); or

(B) until soil productivity for prime farmland **or high capability land** has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed under IC 14-34-3-3(16).

If a silt dam is to be retained as a permanent impoundment under IC 14-34-10-2(b)(11), the appropriate part of the bond may be released under this subdivision if provisions for sound future maintenance by the operator or the landowner are made with the

director.

(3) When the operator has successfully completed all surface coal mining and reclamation activities, the release of the remaining part of the bond, but not before the expiration of the period specified for operator responsibility in IC 14-34-10. However, the director may not fully release a bond or deposit until all reclamation requirements of this article are fully met.

SECTION 7. IC 14-34-10-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) As used in this section, "higher or better uses" means postmining land uses that have a higher:

(1) economic value; or

(2) nonmonetary benefit;

to the landowner or the community than the premining land uses.

(b) In addition to other standards a permittee must meet under rules of the commission, a permittee shall do the following:

(1) Place markers on the site to readily identify the permit area.

(2) Conduct the surface coal mining operation in a manner that maximizes the use and conservation of the solid fuel resource that is recovered so that reaffecting the land in the future through surface coal mining is minimized.

(3) Restore the land affected to a condition capable of supporting the uses that the land was capable of supporting before mining or higher or better uses of which there is a reasonable likelihood if:

(A) those uses do not:

(i) present an actual or a probable hazard to public health or safety; or

(ii) pose an actual or a probable threat of water diminution or pollution; and

(B) the permit applicant's declared proposed land use following reclamation:

(i) is not impractical or unreasonable;

(ii) is not inconsistent with applicable land use policies and plans;

(iii) does not involve unreasonable delay in implementation; or

(iv) does not violate federal, state, or local law.

(4) Except as provided in subdivisions (5) and (6) and section 4 of this chapter with respect to all surface coal mining operations backfill, compact where advisable to ensure stability or prevent the leaching of toxic materials, and grade to restore the approximate original contour of the land with all highwalls, spoil

piles, and depressions eliminated. Small depressions are allowed if needed to retain moisture to assist revegetation or as otherwise authorized under this article.

(5) In a surface coal mining operation that:

(A) is carried out at the same location over a substantial time;

(B) transects the coal deposit and the thickness of the coal deposit relative to the volume of the overburden that is large; and

(C) has overburden and other spoil and waste materials at a particular point in the permit area or otherwise available from the entire permit area that is insufficient, giving due consideration to volumetric expansion, to restore the approximate original contour;

the operator, at a minimum, shall backfill, grade, and compact, where advisable, using all available overburden and other spoil and waste materials to attain the lowest practicable grade but not more than the angle of repose to provide adequate drainage and to cover all acid-forming and other toxic materials to achieve an ecologically sound land use compatible with the surrounding region.

(6) If in surface coal mining:

(A) the volume of overburden is large relative to the thickness of the coal deposit; and

(B) the operator demonstrates that due to volumetric expansion the amount of overburden and other spoil and waste materials removed in the course of the mining operation is more than sufficient to restore the approximate original contour;

the operator shall, after restoring the approximate contour, backfill, grade, and compact, where advisable, the excess overburden and other spoil and waste materials to attain the lowest grade but not more than the angle of repose and to cover all acid-forming and other toxic materials to achieve an ecologically sound land use compatible with the surrounding region. The overburden or spoil shall be shaped and graded in a way that prevents slides, erosion, and water pollution and revegetated in accordance with the requirements of this article.

(7) Stabilize and protect all surface areas, including spoil piles, affected by the surface coal mining and reclamation operation to effectively control erosion and attendant air and water pollution.

(8) Remove the topsoil from the land in a separate layer and:

(A) replace the topsoil on the backfill area; or

(B) if the topsoil is not used immediately;

(i) segregate the topsoil in a separate pile from other spoil; and

(ii) if the topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, maintain a successful cover by quick growing plants or other means so that the topsoil is preserved from wind and water erosion, remains free of any contamination by other acid or toxic material, and is in a usable condition for sustaining vegetation when restored during reclamation.

However, if the topsoil is of insufficient quantity or of poor quality to sustain vegetation or if other strata are more suitable for vegetation requirements, the operator shall remove, segregate, and preserve, in a like manner, the strata that are best able to support vegetation.

(9) Restore the topsoil or the best available subsoil that is best able to support vegetation.

(10) For all prime farmland as identified in IC 14-34-3-3(16), comply with the specifications for soil removal, storage, replacement, and reconstruction established by rules of the commission and do the following:

(A) Segregate the A horizon of the natural soil unless it is shown that other available soil materials will create a final soil that has a greater productive capacity, stockpile this material, if not used immediately, separately from other spoil, and provide needed protection from wind and water erosion or contamination by other acid or toxic material.

(B) Segregate the B horizon of the natural soil, or underlying C horizons or other strata, or a combination of those horizons or other strata that are texturally and chemically suitable for plant growth and equal to or more favorable for plant growth than the B horizon, in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that existing in the natural soil, stockpile this material, if not used immediately, separately from other spoil, and provide needed protection from wind and water erosion or contamination by other acid or toxic material.

(C) Replace and regrade the root zone material described in clause (B) with proper compaction and uniform depth over the regraded spoil material.

(D) Redistribute and grade in a uniform manner the surface soil horizon described in clause (A).

(10.5) For all high capability lands as identified in IC 14-34-3-3(16) to be mined and reclaimed, do the following:

(A) Comply with the specifications for soil removal, storage, replacement, and reconstruction established by rules of the commission.

(B) Segregate and replace all or part of the darkened surface soil as a final cover as a last step in the required grading. When available in such depth, as least eighteen (18) inches of the darkened surface soil shall be segregated and replaced. However, in no case shall less than the top eight (8) inches of surface soil, darkened or not, be segregated or replaced. This segregation and replacement requirement may be altered by the director only if the director determines on the advice of competent soil scientists that other material available in the cast overburden would be suitable in meeting the reclamation requirements. Below the darkened surface soil, the replaced material must be suitable as agricultural root medium. The director shall determine by rule what constitutes a suitable agricultural root medium by composition and depth.

(11) Create, if authorized in the approved surface coal mining and reclamation plan, permanent impoundments of water on mining sites. The permittee may create the permanent impoundment only after the permittee demonstrates the following:

(A) The size of the impoundment is adequate for the intended purposes.

(B) The impoundment dam construction will be designed to achieve necessary stability with an adequate margin of safety compatible with that of structures constructed under 16 U.S.C. 1006.

(C) The quality of impounded water will be suitable, on a permanent basis, for the intended use and discharges from the impoundment will not degrade the water quality below water quality standards established under applicable federal and state law in the receiving stream.

(D) The level of water will be reasonably stable.

(E) Final grading will provide adequate safety and access for proposed water users.

(F) The water impoundments will not result in the diminution of the quality or quantity of water used by adjacent or surrounding landowners for agricultural, industrial,

recreational, or domestic uses.

(12) Conduct an augering operation associated with surface coal mining in a manner that maximizes the recoverability of mineral reserves remaining after the surface coal mining and reclamation operation is complete and seal all auger holes with an impervious and noncombustible material to prevent drainage except where the director determines that the resulting impoundment of water in those auger holes may create a hazard to the environment or the public health or safety. The director may prohibit augering if necessary to:

(A) maximize the use, recoverability, or conservation of the solid fuel resources; or

(B) protect against adverse water quality impacts.

(13) Minimize disturbances to the prevailing hydrologic balance at the mine site and associated offsite areas and to the quality and quantity of water in surface and ground water systems during and after surface coal mining and reclamation operations by doing the following:

(A) Avoiding acid or other toxic mine drainage by measures such as the following:

(i) Preventing or removing water from contact with toxic-producing deposits.

(ii) Treating drainage to reduce toxic content that adversely affects downstream water upon being released to watercourses.

(iii) Casing, sealing, or otherwise managing boreholes, shafts, and wells and keep acid or other toxic drainage from entering ground and surface water.

(B) Conducting surface coal mining and reclamation operations so as to prevent, to the extent possible using the best technology currently available, violations of the effluent limitations for coal mining operations established under applicable state or federal law.

(C) Constructing siltation structures under clause (B) before commencement of surface coal mining operations that will be certified by an engineer licensed under IC 25-31 and constructed as designed and approved in the reclamation plan.

(D) Cleaning out and removing temporary or large settling ponds or other siltation structures from drainageways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site and in a manner approved by the director.

(E) Restoring recharge capacity of the mined area to approximate premining conditions.

(F) Avoiding channel deepening or enlargement in operations requiring the discharge of water from mines.

(G) Other actions required under the permit.

(14) With respect to surface disposal of mine wastes, tailings, coal processing wastes, and other wastes in areas other than the mine workings or excavations, the following:

(A) Stabilize all waste piles in designated areas through construction in compacted layers, including the use of incombustible and impervious materials if necessary.

(B) Assure the following:

(i) The final contour of the waste pile will be compatible with natural surroundings.

(ii) The site will be stabilized and revegetated according to this article.

(15) Refrain from surface coal mining within five hundred (500) feet of active and abandoned underground mines to prevent breakthroughs and to protect the health or safety of miners. However, the director shall permit an operator to mine near, through, or partially through an abandoned underground mine or closer to an active underground mine if the following conditions exist:

(A) The nature, timing, and sequencing of the approximate coincidence of specific coal surface mining activities with specific underground coal mining activities are jointly approved by the regulatory authorities concerned with surface coal mining regulation and the health and safety of underground miners.

(B) The operations will result in:

(i) improved resource recovery;

(ii) abatement of water pollution; or

(iii) elimination of hazards to the health and safety of the public.

(16) Design, locate, construct, operate, maintain, enlarge, modify, and remove or abandon, in accordance with the standards and criteria used by the United States Secretary of the Interior to ensure that flood control structures are safe and effectively perform their functions, all existing and new coal mine waste piles:

(A) consisting of:

(i) mine wastes;

(ii) tailings;

(iii) coal processing wastes; or

(iv) other liquid and solid wastes; and

(B) used temporarily or permanently as dams or embankments.

(17) Ensure the following:

(A) All debris, acid-forming materials, toxic materials, or materials constituting a fire hazard are treated, buried, and compacted or otherwise disposed of in a manner designed to prevent contamination of ground or surface water.

(B) Contingency plans are developed to prevent sustained combustion.

(18) Ensure that explosives are used only in accordance with the following:

(A) IC 14-34-12.

(B) Applicable state and federal law.

(C) The rules adopted by the commission.

(19) Ensure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the surface coal mining operations. However, if the applicant proposes to combine surface coal mining operations with underground coal mining operations to assure maximum practical recovery of the mineral resources, the director may grant a variance for specific areas within the reclamation plan from the requirement that reclamation efforts proceed as contemporaneously as practicable and permit underground coal mining operations before reclamation if the following conditions are met:

(A) The director finds in writing the following:

(i) The applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining operations.

(ii) The proposed underground mining operations are necessary or desirable to assure maximum practical recovery of the mineral resource and will avoid multiple disturbance of the surface.

(iii) The applicant has satisfactorily demonstrated that the plan for the underground coal mining operations conforms to the requirements for underground coal mining in that jurisdiction and that permits necessary for the underground coal mining operations have been issued by the appropriate authority.

(iv) The applicant has shown the areas proposed for the

variance are necessary for the implementation of the proposed underground coal mining operations.

(v) Substantial adverse environmental damage, either onsite or offsite, will not result from the delay in completion of reclamation as required by this article.

(vi) The provisions for the offsite storage of spoil will comply with subdivision (25).

(B) The commission has adopted specific rules to govern the granting of variances in accordance with this subdivision.

(C) Variances granted under this subdivision are to be reviewed by the director not more than three (3) years from the date of issuance of the permit.

(D) Liability under the bond filed by the applicant with the director under IC 14-34-6 is for the duration of underground coal mining operations and until the requirements of this section and IC 14-34-6 are fully complied with.

(20) Ensure that the construction, maintenance, and postmining conditions of access roads into and across the site of operations will control or prevent the following:

(A) Erosion and siltation.

(B) Pollution of water.

(C) Damage to the following:

(i) Fish or wildlife or their habitat.

(ii) Public or private property.

(21) Refrain from the construction of roads or other access ways:

(A) up a stream bed or drainage channel; or

(B) in the proximity of a channel;

that seriously alters the normal flow of water.

(22) Establish on the regraded areas and all other land affected a diverse, an effective, and a permanent vegetative cover:

(A) of the same seasonal variety native to the area of land to be affected; and

(B) that is capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area.

However, an introduced species may be used in the revegetation process where desirable and necessary to achieve the approved postmining land use plan.

(23) Assume the responsibility for successful revegetation, as required by subdivision (22), as follows:

(A) On lands not eligible for remining, for five (5) full years after the last year of augmented seeding, fertilizing, irrigation,

or other work to assure compliance with subdivision (22). However, if the director approves a long term intensive agricultural postmining land use, the applicable five (5) or ten (10) year period of responsibility for revegetation commences at the date of initial planting for the long term intensive agricultural postmining land use. If the director issues a written finding approving a long term intensive agricultural postmining land use as part of the mining and reclamation plan, the director may grant exception to subdivision (22).

(B) On lands eligible for remining, for two (2) full years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to ensure compliance with subdivision (22).

(24) Protect offsite areas from slides or damage occurring during the surface coal mining and reclamation operations and not deposit spoil material or locate any part of the operations or waste accumulations outside the permit area.

(25) Place all excess spoil material resulting from coal surface mining and reclamation activities to ensure the following:

(A) Spoil is transported and placed in a controlled manner in a position for concurrent compaction and in a manner that assures mass stability and prevents mass movement.

(B) The areas of disposal are within the bonded permit areas and all organic matter is removed immediately before spoil placement.

(C) Appropriate surface and internal drainage systems and diversion ditches are used in a manner that prevents spoil erosion and movement.

(D) The disposal area does not contain springs, natural watercourses, or wet weather seeps unless lateral drains are constructed from the wet areas to the main underdrains in a manner that prevents filtration of the water into the spoil pile.

(E) If placed on a slope, the spoil is placed as follows:

(i) On the most moderate slope among the slopes on which, in the judgment of the director, the spoil could be placed in compliance with all the requirements of this article.

(ii) If possible, upon or above a natural terrace, bench, or berm if the placement provides additional stability and prevents mass movement.

(F) Where the toe of the spoil rests on a downslope, a rock toe buttress of sufficient size to prevent mass movement is constructed.

(G) The final configuration is compatible with the natural drainage pattern and surroundings and suitable for intended uses.

(H) Design of the spoil disposal area is certified by an engineer licensed under IC 25-31 and in conformance with professional standards.

(I) All other provisions of this article are met.

(26) To the extent possible using the best technology currently available the following:

(A) Minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values.

(B) Enhance those resources where practicable.

(27) Provide for an undisturbed natural barrier:

(A) beginning at the elevation of the lowest coal seam to be mined; and

(B) extending from the outslope for a distance determined by the director;

to serve as a barrier to slides and erosion.

(28) Replace the water supply of an owner of interest in real property who obtains all or part of the owner's supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or a surface source if the supply is affected by contamination, diminution, or interruption proximately resulting from the surface coal mine operation. This article does not affect the right of a person to enforce or protect under applicable law the person's interest in water resources affected by a surface coal mining operation.

(29) Meet other criteria that are necessary to achieve reclamation in accordance with the purposes of this article, taking into consideration the physical, climatological, and other characteristics of the site.